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INTERNATIONAL CO., LTD.
11

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14

15 SZ DJI Technology Co., Ltd. and DJI
Europe B.V.,

16 Plaintiffs,

17 v.

18 Yuneec International Co., Ltd. and
19 Yuneec USA, Inc.,

20 Defendants.

21 Yuneec USA, Inc.,

22 Counter-Claimant,

23 v.

24 SZ DJI Technology Co., Ltd. and DJI
25 Europe B.V.,

26 Counter-Defendants.
27
28

Case No. 5:16-cv-00595-BRO(KKx)

**YUNEEC INTERNATIONAL'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS UNDER
FEDERAL RULE OF CIVIL
PROCEDURE 12(B)(6)**

Date: October 3, 2016
Time: 1:30 p.m.
Courtroom: 14

Judge: Hon. Beverly Reid O'Connell

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1 Defendant Yuneec International Co. Ltd. (“Yuneec International”) moves to
 2 dismiss Plaintiffs’ first cause of action in their complaint as to United States Patent
 3 No. 9,164,506 (“the ’506 Patent”) for failure to state a claim under which relief can
 4 be granted.¹ The asserted claims of the ’506 Patent are invalid because they are
 5 directed to ineligible subject matter under [35 U.S.C. § 101](#).

6 **I. INTRODUCTION AND SUMMARY**

7 The ’506 Patent is directed to tracking a target by an unmanned aerial vehicle
 8 (“UAV”). The patent itself recognizes that target tracking using unmanned aerial
 9 vehicles (UAVs) has long been performed for purposes such as surveillance,
 10 reconnaissance, and exploration. Traditionally, a person would visually track a
 11 target with his or her eyes, and direct a UAV to follow it using a remote-controlled
 12 device.

13 The patent takes the everyday concept of target tracking and purports to make
 14 it automatic or semi-automatic on UAVs with the help of generic computer
 15 components. These components receive the target data, process it, and send signals
 16 to the UAV to adjust itself based on fundamental laws of nature such as angles and
 17 velocities. The patent does not claim improved methods for tracking, does not
 18 invent any new tracking software or hardware, and does not describe any
 19 specialized UAV-specific technology. The asserted claims of the ’506 Patent—
 20 which recite only abstract ideas and are devoid of inventive concept—are therefore
 21 invalid under Section 101.

22
 23 ¹ Under [Fed. R. Civ. P. 12\(a\)\(4\)](#), Yuneec International understands that it
 24 may bring this Rule 12(b)(6) Motion to Dismiss in lieu of an Answer, and does not
 25 therefore need to respond to the other allegations in the Complaint or file a
 26 Counterclaim at this time. To the extent any response is needed at this time,
 27 Yuneec International hereby generally denies all allegations of the Complaint (*see*
 28 [Fed. R. Civ. P. 8\(b\)\(3\)](#)) to avoid any perceived waiver, while at the same time
 reserving the right to file an amended responsive pleading at an appropriate juncture
 in which it will specifically deny certain allegations and assert certain additional
 defenses as well as counterclaims.

II. STATEMENT OF FACTS

A. DJI's Complaint

On April 1, 2016, Plaintiff SZ DJI Technology Co., Ltd. and DJI Europe B.V. (collectively, "DJI") filed a complaint alleging that Yuneec International and Yuneec USA, Inc. infringe the '506 Patent as well as an additional patent. (ECF No. 1.) The '506 Patent is attached as an exhibit to the Complaint and is therefore properly considered under a Rule 12(b)(6) motion.

Exhibit 3 to the Complaint is entitled "Infringement Claim Chart for U.S. Patent No. 9,164,506" and identifies two asserted claims: claims 1 and 6. (ECF No. 1, Ex. 3 at 136.)

B. The '506 Patent

The '506 Patent does not purport to invent target tracking on UAVs. In fact, as recognized in the '506 Patent, aerial vehicles, such as unmanned aerial vehicles (UAVs), have long been used for performing tasks such as surveillance, reconnaissance, and exploration tasks for military and civilian applications. ('506 Patent, 1:12-15.)

The '506 Patent describes automating or semi-automating the process of manual target tracking. ('506 Patent, Abstract.) The idea of the claimed invention is for a UAV to automatically or semi-automatically track a target by maintaining the same relative position with the target as it is moving. (*See e.g.*, '506 Patent, 24:16-34.) To achieve this, a user inputs "target information" into a control terminal. The computer component on the UAV (e.g., the processor) receives this target information and detects how far a target has deviated from its former position. As best can be understood, the processor then determines how to adjust the UAV and/or the imaging device (e.g., a camera) to correct for any deviations, based on mathematical principles and laws of nature such as angles and speed. (*See e.g.*, '506 Patent, 24:16-63.) The claims do not include anything about how this determination is made.

The patent's illustrations show that the purported invention is made up of conventional components, used in a conventional way. Figure 1 shows a moveable object (101), which can be a UAV, attached by carrier (102) to a payload (104). The payload may be a camera or a camcorder. ('506 Patent, 12:8-10.) A control terminal (112), which can be a tablet or a smartphone, communicates with the movable object to control the movable object, the carrier, and/or the payload as it tracks the target (116). ('506 Patent, 12:42-59.) There is nothing new about any of this.

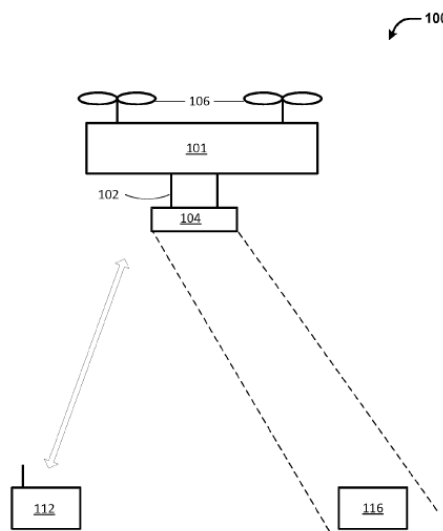


FIG. 1

In another example, Figure 8 is a non-substantive depiction of the simple input and output process of receiving target information, controlling the movable object using this information, and adjusting it to track the target.

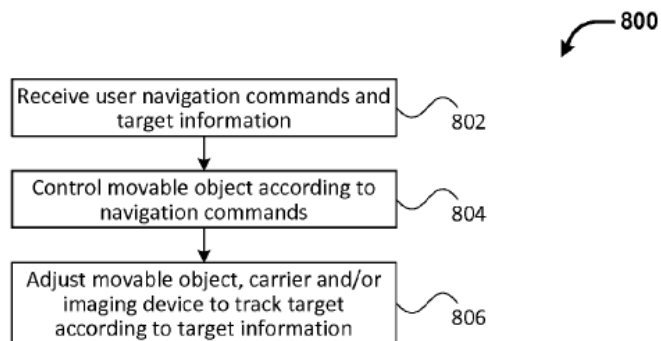


FIG. 8

In another example, Figure 16 is an even less substantive depiction of the connections between the generic components, i.e., the sensing module (1602) connects to the processing unit (1604), which connects to the computer-readable medium (1606), which connects to the control module (1608), which connects to the communication module (1610).

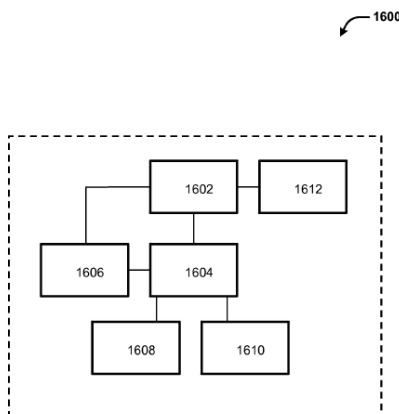


FIG. 16

1 According to its complaint and attached claim charts, DJI asserts that Yuneec
 2 infringes independent claim 1 and dependent claim 6.² Claim 1 recites:

3 1. A system for controlling an unmanned aerial vehicle (UAV),
 4 comprising:

5 one or more receivers, individually or collectively, configured to
 6 receive from a remote user (1) one or more navigation
 7 commands to move the UAV along a flight path, and (2) target
 8 information of a target to be tracked by an imaging device on the
 9 UAV; and

10 one or more processors, individually or collectively, configured
 11 to track the target according to the target information by
 12 automatically adjusting at least one of the UAV or the imaging
 13 device while the UAV moves along the flight path according to
 14 the one or more navigation commands from the remote user,
 15 wherein the one or more processors, individually or collectively,
 16 make a determination to adjust 1) the UAV, 2) the imaging
 17 device, or 3) both the UAV and the imaging device, wherein
 18 said determination is dependent upon a) number of rotational
 19 axes of the imaging device and orientation of said rotational
 20 axes relative to the UAV; b) a navigation path of the UAV; or c)
 21 a maximum angular speed allowable for the UAV or the
 22 imaging device.

23 This simply describes using these conventional components to collect data
 24 about a target. The claim refers to receivers configured to receive information, but
 25 says nothing about what the configuration should be or how it should be done. The
 26 claim then refers to processors that are configured to track the target by making a
 27 determination to adjust the UAV, the imaging device, or both. The determination is
 28 dependent on mathematical principles. However, nothing in the claim provides any
 details about how the processors should be configured, or how the determination
 should be made.

The specification does not fill in these details. It broadly discusses general,
 well-known principles related to movement and orientation, such as changing the

² To the extent that DJI may eventually attempt to assert other claims, it is
 appropriate to treat claims 1 and 6 as representative claims because they are the
 claims that DJI identified in its complaint and claim charts.

1 linear or angular velocity, zoom, or focus. (*See, e.g.*, '506 Patent at 24:45-25:18.)
 2 The specification also generally discusses the types of calculations that can be
 3 made to determine appropriate velocities for the UAV and/or the imaging device
 4 based on the position of the target. (*See, e.g.*, '506 Patent, 27:17-31:61.) These
 5 calculations are not part of the claim. Claim 6 adds only the additional limitation
 6 “wherein the UAV comprises a plurality of rotors configured to generate lift for the
 7 UAV,” but says nothing about how the system of claim 6 is in any way
 8 meaningfully different from the system of claim 1.

9 The specification also confirms that the computer elements referred to in the
 10 claims are entirely conventional:

- 11 • a receiver that can be a proximity sensor or a camera ('506 Patent, 25:38-
 12 41);
- 13 • a target that can be identified by “[a]ny suitable image recognition or
 14 identification techniques” ('506 Patent, 24:1-15);
- 15 • a pre-processing unit that can include “any hardware, software, or a
 16 combination thereof” ('506 Patent, 19:22-26);
- 17 • a processor that can be a “programmable processor (e.g., a central
 18 processing unit (CPU))” ('506 Patent, 48:7-12);
- 19 • a control terminal that can be a “a handheld or wearable device” such as
 20 “a smartphone, tablet, laptop, computer, glasses, gloves, helmet,
 21 microphone, or suitable combinations thereof” ('506 Patent, 16:42-51);
 22 and
- 23 • a communication module that can communicate via any one of well-
 24 known communication networks, including local area networks (LAN),
 25 wide area networks (WAN), infrared, radio, WiFi, point-to-point (P2P)
 26 networks, telecommunication networks, or cloud communication. ('506
 27 Patent, 48:44-63.)

28 The '506 Patent does not even purport to claim anything unique to UAVs. It

1 says the claimed systems and methods can be applied to a “wide variety” of
 2 movable objects including a fixed-wing aircraft, a rotary-wing aircraft, a ship, a
 3 submarine, a motor vehicle such as a car, truck, bus, van, motorcycle, or a
 4 spaceplane or probe: (’506 Patent, 40:47-67.) The claims, of course, say nothing
 5 about any of these other objects.

6 **III. ARGUMENT**

7 The ’506 Patent claims only an abstract idea, without an inventive concept.
 8 It is therefore invalid under Section 101 of the Patent Act because it does not claim
 9 patent-eligible subject matter.

10 **A. It Is Appropriate To Decide Patent Eligibility At The** 11 **Pleading Stage**

12 Under [Fed. R. Civ. Proc. 12](#)(b)(6) the Court should dismiss a complaint for
 13 failure to state a claim upon which relief can be granted when the complaint does
 14 not plead a cognizable legal theory, or does not plead sufficient facts under a
 15 cognizable legal theory. *Bell Atl. Corp. v. Twombly*, [550 U.S. 544, 555](#) (2007).

16 Patentability under [35 U.S.C. § 101](#) (the Patent Act) is a threshold
 17 determination on a purely legal issue. *Bilski v. Kappos*, [561 U.S. 593, 602](#) (2010).
 18 It is appropriate to decide Section 101 issues at the pleading stage:

19 From a practical perspective, addressing section 101 at the
 20 outset of litigation will have a number of salutary effects. First,
 21 it will conserve scarce judicial resources. Failure to recite
 22 statutory subject matter is the sort of ‘basic deficiency,’ that can,
 and should, ‘be exposed at the point of minimum expenditure of
 time and money by the parties and the court.’

23 *Ultramercial, Inc. v. Hulu, LLC*, [772 F.3d 709, 718-19](#) (Fed. Cir. 2014). Courts in
 24 this District have invalidated patent claims on Rule 12 motions prior to claim
 25 construction. For example, in *Wolf v. Capstone Photography, Inc.*, this Court
 26 ordered a 12(c) dismissal on § 101 grounds (“the basic character of the claimed
 27 subject matter is readily ascertainable from the face of the patent, and that
 28 plaintiffs’ arguments for delaying the § 101 inquiry are unpersuasive.”), No. 2:13-

CV-09573, [2014 WL 7639820, at *6](#), *10 (C.D. Cal. Oct. 28, 2014) (Snyder, C.) (quotations omitted); *see also Eclipse IP LLC v. McKinley Equip. Corp.*, No. SACV 14-154-GW (AJWx), [2014 WL 4407592, at *7-9](#) (C.D. Cal. Sept. 4, 2014) (granting motion to dismiss).

B. Abstract Ideas Are Not Eligible For Patent Protection.

Section 101 of the Patent Act defines patent-eligible subject matter as “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” [35 U.S.C. § 101](#). The Supreme Court has long recognized that abstract ideas are not eligible for patent protection. *See Alice Corp. v. CLS Bank Int’l*, [134 S. Ct. 2347, 2359](#) (2014), [189 L. Ed. 2d 296](#) (2014) (patent claims directed toward abstract ideas implemented using conventional computer technology are invalid for lack of patentable subject matter under § 101); *see also Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, [132 S. Ct. 1289, 1293](#) (2012), [182 L. Ed. 2d 321](#) (2012); *Bilski*, [561 U.S. at 653](#) (“Phenomena of nature..., mental processes, and abstract intellectual concepts are not patentable.”).

To determine if a patent claim is ineligible under §101, the Supreme Court has established a two-step test. *Alice*, [134 S. Ct. at 2354](#).

Step 1. The Court must first determine whether the claims at issue are directed to a patent-ineligible concept. *Alice*, [134 S. Ct. at 2355](#). Claims that are “drawn to an abstract idea” are ineligible. *Id. at 2353*. “Identifying whether a claim is ‘directed to an abstract idea’ under step one of the *Alice* test requires courts to examine the purpose of a challenged claim.” *Apollo Fin., LLC v. Cisco Sys., Inc.*, No. 2:15-CV-9696 RSWL (PJWX), [2016 WL 3234518, at *4](#) (C.D. Cal. June 7, 2016); *see Blue Spike, LLC v. Google, Inc.*, No. 14 cv 01650, [2015 WL 5260506, at *4](#) (N.D. Cal. Sept. 8, 2015) (“To determine whether patent claims are directed to an abstract idea, the Court must ‘distill[] the gist of the claim[s].’”). If the focus of the claims is “on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool,” the claim must be subjected to step two of the *Alice*

1 test. *Enfish, LLC. v. Microsoft Corp.*, [822 F.3d 1327, 1336](#) (Fed. Cir. 2016).

2 Step 2. If the claims are directed to a patent-ineligible concept, the Court
3 must then determine whether there is an “inventive concept” that is “sufficient to
4 ensure that the patent in practice amounts to significantly more than a patent upon
5 the [ineligible concept] itself.” *Alice*, [134 S. Ct. at 2355](#). Transformation of a
6 patent-ineligible abstract idea “into a patent-eligible application requires ‘more than
7 simply stat[ing] the [abstract idea] while adding the words ‘apply it.’” *Id.* [at 2357](#).

8 The Supreme Court has made clear that merely taking an abstract idea and
9 adding steps (or breaking the idea into steps) involving “well-understood,”
10 “routine,” or “conventional” activity does nothing to add an inventive concept to an
11 abstract idea. *Alice*, [134 S. Ct. at 2359](#) (claims to abstract idea invalid despite
12 reciting computer components); *Content Extraction & Transmission LLC v. Wells*
13 *Fargo Bank, Nat. Ass’n*, [776 F.3d 1343, 1347-48](#) (Fed. Cir. 2014), *cert. denied*,
14 [136 S. Ct. 119, 193 L. Ed. 2d 208](#) (2015) (claims to abstract idea invalid despite
15 requirement of scanner and computer). Additionally, “limiting the use of an
16 abstract idea to a ‘particular technological environment [,]’” such as “the mere
17 recitation of a generic computer[,] cannot transform a patent-ineligible abstract idea
18 into a patent-eligible invention.” *Alice*, [134 S. Ct. at 2358](#); *see also In re TLI*
19 *Comm’ns LLC Patent Litig.*, [823 F.3d 607, 611](#) (Fed. Cir. May 17, 2016) (holding
20 concrete, tangible components that “merely provide a generic environment in which
21 to carry out an abstract idea” did not make the patent valid).

22 **C. The ’506 Patent Claims Are Not Eligible For Patent** 23 **Protection.**

24 **1. Step 1: The Asserted Claims of the ’506 Patent Are** 25 **Directed to an Abstract Idea**

26 As part of the first step of the Section 101 inquiry, “the Court distills the gist
27 of the claim,” in other words, whether the “character” of the claims as a whole is
28 directed to an abstract idea. *Open Text S.A. v. Box, Inc.*, [78 F. Supp. 3d 1043, 1046-](#)

1 [47](#) (N.D. Cal. 2015); *Enfish*, [822 F.3d at 1335-36](#).

2 There can be no real dispute that the gist of the '506 Patent is directed to an
3 abstract idea—automatic tracking of a target. ('506 Patent, 1:19-31.) The claim
4 language makes this clear. The purported invention is a system for controlling a
5 UAV, using receivers and processors that are configured in some general but
6 unstated way, and making a determination according to some unspecified method.
7 The claims cover, at best, an abstract system without providing any details.

8 Moreover, tracking and monitoring are everyday concepts that courts have
9 held to be abstract. *See MacroPoint, LLC v. FourKites, Inc.*, No. 1:15 CV 1002,
10 [2015 WL 6870118, at *3](#) (N.D. Ohio Nov. 6, 2015) (claims directed toward
11 tracking freight abstract since “the claim discloses nothing more than a process for
12 tracking freight, including monitoring, locating, and communicating regarding the
13 location of the freight,” and specifically, “[t]hese ideas are all abstract in and of
14 themselves.”); *see also Wireless Media Innovations, LLC v. Maher Terminals, LLC*,
15 [100 F. Supp.3d 405, 413](#) (D.N.J. 2015) (claims directed toward an “abstract idea:
16 monitoring locations, movement, and load status of shipping containers within a
17 container-receiving yard, and storing, reporting, and communicating this
18 information in various forms through generic computer functions.”).

19 Similarly, the Court of Federal Claims recently held in a case involving
20 motion tracking using generic sensors that tracking is an abstract concept. In
21 *Thales Visionix, Inc. v. United States*, [122 Fed. Cl. 245, 252](#) (2015), the court found
22 as abstract the idea of “tracking two moving objects [the pilot and the target]”
23 which incorporated laws of nature governing motion. The asserted patent, entitled
24 “Motion Tracking,” covered a helmet display that automatically tracked targets in a
25 pilot’s vision. *Id.* at 248. The patent claimed a system with (1) two tracking
26 sensors, one mounted on the tracked object and the other on a moving reference
27 frame, and (2) a receiver “configured to determine an orientation of the object
28 relative to the moving reference frame.” *Id.* at 249. Based on mathematical

equations (related to angular speed and relative rotational positioning), the positions of the targets would automatically adjust as the pilot moved. *Id.* The Court dismissed the case on a motion for judgment on the pleadings because the patent covered ineligible subject matter. *Id. at 257.*

The purported inventions of the '506 Patent are similarly abstract. They are simply directed to the *automation* of motion tracking a process that can be performed manually. ('506 Patent, 1:35-40; 11:19-22; 11:33-36.) Tracking can be done as rudimentarily as with the naked eye, and the Federal Circuit has affirmed that processes that can be performed manually are abstract under § 101. *See CyberSource Corp. v. Retail Decisions, Inc.*, [654 F.3d 1366, 1371-72](#) (Fed. Cir. 2011) (method of verifying validity of credit card transactions over the Internet held unpatentable, as it could be performed manually); *Versata Dev. Grp., Inc. v. SAP Am., Inc.*, [793 F.3d 1306, 1333](#) (Fed. Cir. 2015) (noting idea was patent ineligible when it “could be performed in the human mind or by a human using a pen and paper.”); *Content Extraction*, [776 F.3d at 1347](#) (claims unpatentable since “humans have always performed these functions” of “data collection, recognition, and storage,” which are “indisputably well-known.”). Nothing in the claims is anything other than an abstract idea.

2. Step 2: The Asserted Claims of the '506 Patent Do Not Recite an Inventive Concept

For patent claims to have an inventive concept, they need to address a specific technological problem and provide a technological solution that is tied to particular computer hardware or software solutions. For example, in *DDR Holdings, LLC v. Hotels.com, L.P.*, [773 F.3d 1245](#) (Fed. Cir. 2014), the patent claims addressed a problem specific to the Internet—in particular, the fact that when a user clicks on an advertisement on a certain website, conventional function would send the user to a third party merchant’s website and thus away from the original website. *Id. at 1257.* The patent claims addressed this problem by creating

1 a “hybrid web page,” according to a specific method, that displays the third party’s
 2 content within the original website. *Id.* The court found this to be a sufficiently
 3 inventive concept because the claims did not “broadly and generically claim ‘use of
 4 the internet’ to perform an abstract business practice” – rather, the claims provided
 5 “a result that overrides the routine and conventional sequence of events ordinarily
 6 triggered by the click of a hyperlink.” *Id. at 1258.*

7 Similarly, in *California Institute of Technology v. Hughes Communications,*
 8 *Inc.*, [59 F. Supp. 3d 974](#) (C.D. Cal. 2014), this court upheld patent claims directed
 9 to directed to correcting corrupt stored data with an error correction code called
 10 irregular repeat and accumulate code. *Id. at 1000-01.* This method of error
 11 correction applies unconventional steps to solving the problem of corrupted data,
 12 including “irregular repetition and the use of a prior parity bit to calculate the next
 13 parity bit.” *Id. at 998.* Critically, the patent claims covered *only* this approach to
 14 error correction, thus ensuring that upholding the patent would not “preempt the
 15 field of error correction” or “preclude the use of other effective error correction
 16 techniques.” *Id. at 994.*

17 There is nothing like this in the ’506 patent. It does not purport to invent
 18 UAVs, or tracking targets, or tracking targets using UAVs, or any specialized
 19 computer hardware related to UAV tracking. It does not purport to invent any of
 20 the recited computer components: processors are not new, receivers are not new,
 21 sensors are not new, controllers are not new, imaging devices are not new. The
 22 only thing the patent purports to do is to automate the long-known process of target
 23 tracking on drones. (’506 Patent, 11:37-40.) But it does so without including
 24 anything in the claims about how this may be done. In that respect, the ’506 patent
 25 seeks to do exactly what the court in *California Institute of Technology* said was
 26 improper—namely, preempting any method of automating target tracking on
 27 drones. *See Cal. Inst. of Tech.*, [59 F. Supp. 3d at 994.](#)

28 The mere automation of a traditionally manual process, or use of updated

1 technology to automate a process, is not inventive. *See Content Extraction*, [776](#)
 2 [F.3d at 1347](#) (claims reciting the steps of “(1) collecting data, (2) recognizing
 3 certain data within the collected data set, and (3) storing that recognized data in a
 4 memory” were unpatentable since “humans have always performed these functions”
 5 of “data collection, recognition, and storage,” which are “indisputably well-
 6 known.”).

7 The ’506 Patent’s claimed invention describes generic systems and methods
 8 for receiving and processing target information and adjusting a UAV to track the
 9 target. But this was traditionally done by a user manually tracking the target with
 10 his or her eyes and then controlling the UAV with a remote control. (’506 Patent,
 11 1:20-31.) According to the ’506 Patent, this same concept is achieved via basic
 12 input and output functions performed using generic and conventional computer
 13 components. Where “the recited physical components behave exactly as expected
 14 according to their ordinary use,” there is no inventive concept. *In re TLI*, [823 F.3d](#)
 15 [at 615](#); *see CMG Fin. Servs. Inc. v. Pac. Trust Bank, FSB*, [50 F. Supp. 3d 1306](#),
 16 [1320-21](#) (C.D. Cal. 2014) (“None of the claims here actually describe any particular
 17 software, how it is designed, who designed it, or how it achieves the identified
 18 tasks. . . . [O]ne cannot merely claim that an abstract idea is tied to a machine by
 19 stating that the abstract steps will be performed via software instructions.”).

20 Claim 1 fails to recite any element, individually or as an ordered
 21 combination, that can rescue it from patent ineligibility under § 101. Claim 6,
 22 which merely recites the UAV comprises a plurality of rotors configured to
 23 generate lift for the UAV. There is no disclosure or details of this supposed
 24 configuration and likewise no inventive concept is disclosed.

25 The specification confirms that all of the computer components recited in the
 26 ’506 Patent are conventional everyday components performing their expected
 27 functions:
 28

- 1 • The **imaging device** can be a camera or a camcorder. ('506 Patent, 12:8-12.)
- 2
- 3 • The **receivers** can be a proximity sensor or a GPS sensor or a camera.
- 4 ('506 Patent, 25:38-41.)
- 5 • The **processor** can be a central processing unit (CPU) ('506 Patent, 48:7-10.). The pre-processing unit can include “any hardware, software”.
- 6 ('506 Patent, 19:22-26.)
- 7
- 8 • The **communication module** can use infrared, radio, WiFi, or point-to-point networks. ('506 Patent, 44-63.)
- 9
- 10 • The **control terminal** can be a smartphone, tablet, laptop, computer, glasses, gloves, helmet, or a microphone. ('506 Patent, 16:42-51.)
- 11

12 There is no inventive concept in a recitation of generic computer components
 13 used to receive and process data in their expected capacities. In fact, as
 14 summarized in *DDR Holdings*, both the Supreme Court in *Alice* and the Federal
 15 Circuit many times since have found there to be no inventive concept where an
 16 abstract idea is simply applied to generic computer hardware. *DDR Holdings*, [773 F.3d at 1256](#) (summarizing cases where no inventive concept was found because the
 17 “patent-ineligible abstract ideas [were] plainly identifiable and divisible from the
 18 generic computer limitations recited by the remainder of the claim”); *see also*
 19 *Electric Power Group, LLC v. Alstom, S.A.*, No. 2015-1778, [2016 WL 4073318, at *5](#) (Fed. Cir. Aug. 1, 2016) (no inventive concept when “[n]othing in the claims,
 20 understood in light of the specification, requires anything other than off-the-shelf,
 21 conventional computer, network, and display technology for gathering, sending, and
 22 presenting the desired information.”); *buySAFE, Inc. v. Google, Inc.*, [765 F.3d 1350, 1355](#) (Fed. Cir. 2014) (no inventive concept in case involving “generic”
 23 computer functionality; “[t]hat a computer receives and sends the information over
 24 a network—with no further specification—is not even arguably inventive.”).

25 The prosecution history of the '506 Patent likewise confirms there is no
 26
 27
 28

1 inventive concept.³ During prosecution, the Examiner rejected all of the claims of
 2 the '506 Patent as anticipated and/or obvious. (Request for Judicial Notice
 3 ("RJN"), Ex. A (1/5/15 Non-Final Rejection at p. 3-18).) Claim 1 was allowed only
 4 after the Applicant amended the claim to add a "wherein" limitation to require
 5 making a determination to adjust the UAV and/or imaging device in some
 6 unspecified way, based on known mathematical principles related to motion and
 7 orientation.⁴ (RJN, Ex. B (5/7/15 Supplemental Amendment, Response to Non-
 8 Final Office Action at 9-10).) Although the issuance of the '506 Patent required
 9 adding this limitation, the additional language has no substance or inventive
 10 concept. It simply states that a determination is made based on certain factors, but
 11 it does not say how the factors should be applied, or even how they relate to making
 12 the required determination. The "determination" limitation is still abstract, and still
 13 lacks an inventive concept. *See TDE Petroleum Data Sols., Inc. v. AKM Enter.,*
 14 *Inc.*, No. 2016-1004, [2016 WL 4271975, at *2](#) (Fed. Cir. Aug. 15, 2016) (affirming
 15 patent-ineligibility of patent that "recites the *what* of the invention, but none of the
 16 *how* that is necessary to turn the abstract idea into a patent-eligible invention.");
 17 *Electric Power Group*, [2016 WL 4073318, at *1](#) (claims patent-ineligible when
 18 they stated a function in general terms, without limiting them to technical means for
 19

20 ³ The prosecution history is a "public record," and the Court may properly
 21 take judicial notice of it when considering a Rule 12 motion under Federal Rule of
 22 Evidence 201. *See e.g. Coinstar, Inc. v. CoinBank Automated Sys., Inc.*, [998 F.](#)
 23 [Supp. 1109, 1114](#) (N.D. Cal. 1999) (taking judicial notice of prosecution history);
Eclipse, [2014 WL 4407592, at *7-9](#) (court may consider on a 12(b)(6) motion
 matters which are properly judicially noticeable).

24 ⁴ The following language was added: "wherein the one or more processors,
 25 individually or collectively, make a determination to adjust 1) the UAV, 2) the
 26 imaging device, or 3) both the UAV and the imaging device, wherein said
 27 determination is dependent upon a) number of rotational axes of the imaging device
 28 and orientation of said rotational axes relative to the UAV; b) a navigation path of
 the UAV; or c) a maximum angular speed allowable for the UAV or the imaging device." (RJN, Ex. B (5/7/16 Supplemental
 Amendment at 2).)

1 performing the functions that are arguably an advance over conventional computer
2 and network technology.)

3 **IV. CONCLUSION**

4 For the foregoing reasons, Defendant respectfully requests that the Court find
5 the '506 Patent invalid under [35 U.S.C. § 101](#) and dismiss DJI's first cause of
6 action in its complaint with prejudice.

7
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Respectfully submitted,

9
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